THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6358 OF 2007

DATED: 06TH JULY, 2007.

Between :

P. Mallikarjuna … Petitioner

And

The Joint Collector & EOED,
Ananthapur, Ananthapur District
And others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6358 OF 2007

ORDER :

The 1st respondent issued Tender Notice dated 22-2-2007 inviting tenders for appointment of Stage-II Contractors for transporting essential commodities from MLS point to fair price shop points.

In response to the same, the petitioner had participated along with three others. The petitioner was qualified along with another applicant and since both of them quoted the same rate, lottery was drawn and the petitioner was declared as the successful bidder. However, it appears that there was a complaint alleging that the petitioner is having a rice mill and therefore not qualified for awarding contract in question and consequently an enquiry was conducted by the 2nd respondent in which the allegation was found to be true. On the basis of the said report dated 13-3-2007 the 1st respondent passed the impugned order dated 16-3-2007 disqualifying the petitioner's tender on the ground that as per clauses 5 & 21 of the Terms and Conditions of the Tender Notice the Rice Millers Association/Rice Millers Lorry Owners Association or their Associates are prohibited from participating in the tenders. Aggrieved by the order, this writ petition has been filed.

The petitioner states that the father of the petitioner during his lifetime purchased a rice mill, which was gifted to him, however he never operated the rice mill but leased out the same to other persons. Thus, it is contended that the petitioner cannot be disqualified under

condition No.5 of the tender conditions.

A counter-affidavit has been filed on behalf of the respondents stating that as a matter of fact, the petitioner is having a rice mill in his name and the lease agreement claimed by the petitioner has never been registered. Even at the time of filing the tender, the property tax and electricity bills and municipal assessment were shown to have been paid in the name of the petitioner. Hence, the plea of the petitioner is incorrect.

I have heard the learned Counsel for both the parties.

It is not in dispute that as per Clause-5 of the terms and conditions of the tender notice the Rice Millers Association/the Rice Millers Lorry Owners Association or their Associates are prohibited from participating in the tenders. Though the petitioner does not dispute the fact that he is the owner of a rice mill, it is only pleaded that the same has been leased out to a third party and he is in no way concerned with the said rice mill. However, on an enquiry by the 2nd respondent it was found that the rice mill stands in the name of the petitioner and the property tax and the electricity bills are being paid in his name. Thus, the respondents 1 and 2 having disbelieved the version of the petitioner held that he was disqualified under Condition No.5. I do not find any justifiable reason to interfere with such a finding of fact in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

The law is well-settled that the contractual matters are not justiciable and they need judicial intervention only in case of unfairness. It is also a well-settled principle of law that the right to choose cannot be considered to be an arbitrary power as long as the said power is not exercised for any collateral purpose.

As rightly contended by the learned Counsel for the Corporation, the condition imposed under Clause-5 of the Tender Notice is aimed at eliminating any person associated with the business of rice mills since the tenders are invited for transportation of essential

commodities from MLS Point to fair price shop points. In the circumstances, even assuming that the petitioner is not running the rice mill by himself, since his association with the business cannot be ignored I am unable to hold that the action of the Corporation in disqualifying him under Clause-5 is either arbitrary or unreasonable.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is hereby dismissed. No costs.

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G. ROHINI, J.

Dt. 06-7-2007

mrb